

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1114 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMANLAL BHIKHABHAI DESAI

Versus

MANUBHAI BHIKHABHAI DESAI

Appearance:

MR SURESH M SHAH for Petitioner

MR AJ PATEL for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 26/03/98

ORAL JUDGEMENT

Heard the learned Advocates for the parties. By the impugned order, the learned Civil Judge, Pardi has rejected the petitioner's application Exh.192 to decide the issue raised as preliminary issue. The learned Judge while rejecting the application stated that as the evidence has already been recorded, no useful purpose is going to be served if the issue is allowed to be decided

as preliminary issue. It is brought to my notice that this Court in Civil Revision Application No.126/86 (Coram: S D Shah, J. as he then was), by order dated 24.1.96, directed that if any application is made for deciding the issue with respect to preliminary issue about jurisdiction of the Court, the same shall be decided as preliminary issue. The learned Judge could not have overlooked the said order on the ground that the case is at the advanced stage. There is an impropriety on the part of the learned Judge. If the party felt that in view of the fact that the evidence has been recorded and it is not the stage, such an issue can be decided as preliminary issue, they could have moved to this Court for modification of the order, but in no case, the learned Judge could have bypass the order of this Court.

2. In view of this, the Revision Application is allowed. The impugned order ndated 28.7.1997 passed by the Civil Judge (JD), Pardi below Exh.192 is quashed and set aside. Application Exh.192 is granted. Rule made absolute. The trial court is directed to expedite the hearing of the case. Direct Service.

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msp.